

FEB 23 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of

Telephone Number Portability

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CC Docket No. 95-116

To: The Commission

COMMENTS OF
THE RURAL TELECOMMUNICATIONS GROUP

The Rural Telecommunications Group ("RTG"), by its attorneys, hereby respectfully submits these comments supporting the Petition for Forbearance ("CTIA Forbearance Petition") filed on December 16, 1997, by the Cellular Telecommunications Industry Association ("CTIA") in the above captioned proceeding. RTG agrees with CTIA that the Federal Communications Commission's ("FCC" or "Commission") forbearance from enforcing its number portability requirements will enhance competition within the commercial mobile radio services ("CMRS") by permitting CMRS providers to continue to focus their business plans and finances on the development of new or enhanced telecommunications systems, and argues that forbearance from the enforcement of number portability is justifiable under the three-prong forbearance test of Section 10 of the Communications Act of 1934, as amended ("the Act").

I. STATEMENT OF INTEREST

RTG is an organized group of rural telephone companies formed to promote the efforts of rural telecommunications providers to speed the delivery of new, efficient and innovative technologies to the populations of remote and undeserved areas of this country. RTG's members

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are both CMRS licensees and CMRS applicants, and therefore are among those required to share the technical and financial burden of implementing number portability.

II. DISCUSSION

A. **In the Interest of Maintaining the Momentum of the Development of CMRS Competition and Furthering the Objective of Section 309(j)(3)(A) of the Act, the Commission Should Forbear from Enforcing Its Number Portability Requirements.**

Section 251(b)(2) of the Act levies on local exchange carriers (“LECs”) the “duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”¹ As CTIA has already deftly argued, and RTG has recently reiterated, at the present time number portability as contemplated by the Commission is not technically feasible.² It is entirely within the Commission’s discretion to “determine when final number portability is technically feasible.”³ RTG submits that the Commission can best effectuate its duties under the Telecommunications Act of 1996,⁴ which include the fostering of a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans, by exercising its discretion to determine that now is not the time to require CMRS providers to invest in the implementation of number portability capabilities.

¹ 47 U.S.C. § 251(b)(2).

² See *In re Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, CC Docket No. 95-116 (filed Nov. 24, 1997) (“CTIA Extension Petition”); Comments of RTG in CC Docket No. 95-116 (filed Jan. 9, 1998).

³ H.R. CONF. REP. NO. 104-458, 104th Cong., H 1108 (Jan. 31, 1996).

⁴ Pub. L. No. 104-104, 110 Stat. 56 (enacted Feb. 8, 1996).

CTIA accurately indicates that competition in the CMRS industry is flourishing.⁵ CTIA's contention that the current state of competitive growth can only be maintained if carriers are able to channel their available resources into system construction and marketing is doubly applicable to rural telecommunications carriers. In rural areas, where new market entry is slower to develop than in urban areas, rural carriers are endeavoring and at times struggling to upgrade and expand their service offerings and their service territories so that rural Americans have access to the latest innovative telecommunications technologies. RTG has continuously reminded the Commission that the lack of designated entity preferences for rural telephone companies and the adoption of large geographic license areas has made the provision of spectrum-based CMRS services by rural carriers an uphill financial battle. Now that many rural carriers, including RTG members, have made the tremendous resource commitments to bring CMRS services to underserved parts of the country, requiring them to divert those same resources to the implementation of number portability would delay, and possibly halt, the progress these entities are making in the delivery of new services to rural areas. Although the Commission requires that service provider portability be deployed by June 30, 1999 only in the largest 100 Metropolitan Statistical Areas ("MSAs"), *every* rural CMRS carrier will have to upgrade its system(s) to support roaming of ported subscribers *outside of the top 100 MSAs*.⁶ In order to support roaming, all CMRS systems will have to be modified so that they can distinguish between the Mobile Identification Number ("MIN") and the Mobile Directory Number ("MDN"), a costly financial undertaking for which technical industry standards have not yet been developed.⁷

⁵ CTIA Forbearance Petition at 5.

⁶ See *In re Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, 12 FCC Rcd 7236 (1997).

⁷ CTIA Extension Petition at 4-5.

Requiring rural CMRS providers to begin implementing number portability at this critical point in the expansion and development of rural CMRS networks will have a significant impact on the progress that is underway. Monies and other resources currently being applied to the upgrade and build-out of CMRS systems will have to be diverted, in their entirety, to an innovation that is not presently technically feasible, or, as CTIA points out, as desirable or necessary to its intended beneficiaries (*i.e.* PCS providers) as originally thought.⁸

RTG emphasizes that PCS providers are not the only CMRS providers that need a reprieve from number portability implementation. RTG counts many cellular companies among its members, for whom the enforcement of number portability capability could be devastating. The cellular systems in rural areas still predominantly use analog technology. While a large segment of the CMRS industry is making a transition to digital equipment, including established cellular carriers and Specialized Mobile Radio (“SMR”) operators, the carriers in rural areas are making the transition on a somewhat slower track than their urban counterparts. In rural areas, not only is the upgrading of systems to newer technologies, such as from analog to digital, often a precursor to the delivery of new services, sometimes it is an end in itself. Requiring the diversion of money from a planned system upgrade to the implementation of a capability that is not yet even standardized for digital application cannot be justified, either economically, or from a policy standpoint.

⁸ CTIA Forbearance Petition at 4 (“By their vote authorizing CTIA to file this Petition, the CEOs of the majority of these PCS carriers are seeking to devote as much capital as possible to network buildout and marketing by diverting their finite resources from their current obligations to deploy CMRS number portability on the current schedule. Based on their actual experience in the CMRS marketplace, these CEOs have concluded that CMRS number portability imposes more of a financial burden than a competitive benefit for their entry into the CMRS market. In other words, the immediate intended beneficiaries of number portability, PCS carriers, do not deem the near-term implementation of number portability to be as high a priority for marketplace competition as rapid buildout and price competition.”)

Section 309(j)(3)(A) of the Act directs the Commission to promote “the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays.”⁹ Implementing number portability requirements would introduce delay into the development and deployment of new CMRS services in rural areas, both by depleting the capital that rural CMRS providers have reserved for system construction and enhancement, and by necessitating review of requests and petitions filed by rural CMRS providers seeking waivers of Rule Section 20.12 in instances where roaming cannot be provided to roamers using ported numbers.

B. The Impressive State of Development of Competition in the CMRS Marketplace Requires the Commission to Forbear from Implementing Number Portability.

Section 10 of the Act provides that “the Commission shall forbear from applying any regulation or provision of this Act to a telecommunications carrier” if the Commission determines that the three prongs of the forbearance test are met.¹⁰ Specifically, the Commission must forbear from enforcing the number portability requirements if (1) enforcement is not necessary to ensure that charges, practices, classifications and services are just and reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary for the

⁹ 47 U.S.C. § 309(j)(3)(A).

¹⁰ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Sect. 10, *codified at* 47 U.S.C. § 160 (emphasis added). The Commission has acknowledged the mandatory nature of Section 10 forbearance in *In re* Federal Communications Bar Association’s Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order*, FCC 98-18 (rel. Feb. 4, 1998).

protection of consumers; and (3) forbearance is consistent with the public interest.¹¹ RTG supports CTIA's determination that application of the three-prong test to the current state of the CMRS market requires Commission forbearance.

RTG agrees with CTIA that forbearance from the imposition of number portability requirements on CMRS providers satisfies the first and second prongs of the test. The CMRS market is growing increasingly more competitive each day, and the rapid influx of new providers prevents carriers from exacting unjust or unreasonable prices for their services, or "harming" consumers. The Commission's enforcement of the number portability requirements would have the undesired effect of reducing the number of CMRS competitors to the few that could afford to continue system construction and deployment and implement number portability, thereby introducing the potential for unfavorable pricing and lower service quality in markets where multiple providers cease to enter and thrive. In rural areas, where market entry is slower in comparison to more heavily populated urban areas, the effects of number portability implementation and its related expense would noticeably affect the burgeoning development of competition, if not completely foreclose the deployment of CMRS services to some areas completely. Any rural CMRS provider that managed to survive the implementation of number portability would have to find a way to finance both its system(s) and the cost of accommodating number portability, which would equate to charging higher prices for CMRS service.

In making the determination on the public interest prong of the forbearance test, the Commission must consider whether forbearance from enforcing number portability will promote competitive market conditions, including the extent to which such forbearance will enhance

¹¹ 47 U.S.C. § 160(a).

competition among telecommunications service providers.¹² Forbearance from implementing number portability promotes the public interest by ensuring that those carriers that have ventured into the CMRS market, or are contemplating entry, can focus their financial and other resources on the development of affordable, high-quality services necessary for the fulfillment of the edicts of the Act. In many cases, rural Americans are getting their first taste of the new, enhanced and innovative services that their urban peers are beginning to take for granted. Requiring CMRS providers, especially rural providers, to redirect their focus toward implementing number portability could delay or halt the progress of CMRS deployment to the areas of the country that require it most. Without a doubt, the public interest is best served by forbearing from the enforcement of number portability requirements until such time as CMRS providers are well-established and local competition is firmly entrenched.

¹² 47 U.S.C. § 160(b).

III. CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission grant CTIA's request that the Commission forbear from imposing number portability requirements on CMRS providers.

Respectfully submitted,

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Dated: February 23, 1998

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